Local Union No. 194, Association of Western Pulp and Paper Workers and Local Union No. 7, International Longshoremen's and Warehousemen's Union *and* Bellingham Division, Georgia-Pacific Corporation[1] and Local Union No. 194, Association of Western Pulp and Paper Workers. Case 19-CD-415

8 August 1983

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Bellingham Division, Georgia-Pacific Corporation, herein called the Employer, alleging that Local Union No. 194, Association of Western Pulp and Paper Workers, herein called AWPPW, and Local Union No. 7, International Longshoremen's and Warehousemen's Union, herein called ILWU, violated Section 8(b)(4)(D) of the Act by forcing or requiring the Employer to assign certain work to employees represented by each Union respectively.

Pursuant to notice, a hearing was held before Hearing Officer Catherine M. Roth on 8 February 1983. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer and ILWU filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Georgia corporation with a place of business in Bellingham, Washington, is engaged in the business of manufacturing pulp, paper, and chemical products. During the past year, a representative period, the Employer sold and shipped goods and materials directly to points outside the State of Washington valued in excess of $50,000, and purchased goods and materials directly from points outside the State of Washington valued in excess of $50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that AWPPW and ILWU are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer uses large quantities of salt in the course of manufacturing chlorine at its chlorine plant located in Bellingham, Washington. About 14 times a year, the Employer receives bulk shipments of salt at dock facilities which it leases from the Port of Bellingham. Starting in about 1966, salt unloading operations generally proceeded as follows: Employees of Bellingham Stevedoring Company, who were represented by ILWU, would go aboard the vessel and into the hold where they would operate cranes to scoop out the salt and deposit it into a hopper on the dock. From the hopper, the salt would be transported on a series of automated conveyor belts, which were operated by the Employer's employees who were represented by AWPPW, to an outside storage area known as the "salt pad," where the salt was piled. The last conveyor belt, or "shuttle conveyor," would distribute the salt evenly over the salt pad. The salt then would be transferred from the salt pad to the chlorine plant as needed.

In 1973, the Employer raised the level of production at the plant, thereby increasing its consumption of salt and necessitating an increase in the storage capacity of the salt pad. Thereafter, when larger shipments of salt arrived, the Employer sometimes would use bulldozers on top of the salt pad during the unloading process to make a more efficient shape for storage; e.g., by leveling the peaks and squaring the boundaries of the pad. Not having any bulldozers of its own, the Employer had to contract with outside firms to supply them; most often, such contracts required that the bulldozers be operated by the contractor's personnel.[2]

Maintenance problems led the Employer to discontinue using the shuttle conveyor in September 1981. In its place, the Employer decided to use bulldozers exclusively to distribute the salt over the

[1] Bellingham Stevedoring Company appeared at the hearing as a party in interest.

[2] By the time of the hearing, the Employer owned one bulldozer and was leasing a second one.

salt pad during all unloadings. It is not clear which employees operated the bulldozers the first time they were used in such a manner in September 1981, but it is clear that they were not employees represented by ILWU or AWPPW. On that occasion, a member of AWPPW's standing committee protested to Daniel Dahlgren, who then was the Employer's manager of pulp and chemical operations, that AWPPW-represented employees should be operating the bulldozers on top of the salt pad. Dahlgren agreed to let the Employer's AWPPW-represented employees complete the job. Subsequently, at a meeting of their standing committees, the Employer and AWPPW reached an agreement that AWPPW-represented employees would operate the bulldozers or the shuttle conveyor, whichever method the Employer chose to use. Thus, from September 1981 to date, the Employer's AWPPW-represented employees have operated the bulldozers that have been used on top of the salt pad during all unloadings.

Also during the first unloading in September 1981, ILWU protested to its employer, Bellingham Stevedoring, that ILWU members were entitled to operate the bulldozers used during unloadings. ILWU filed a grievance under its collective-bargaining agreement with the Pacific Maritime Association (PMA), of which Bellingham Stevedoring is a member, seeking monetary payments in lieu of assignment of the work. Thereafter, each time a ship or barge arrived, ILWU filed a similar grievance. At some point, Bellingham Stevedoring met with the Employer and requested to act as a contractor for the work on top of the salt pile, but the Employer rejected this request. Meanwhile, ILWU's grievances proceeded through the various steps of the contractual grievance procedure until they reached the stage where ILWU requested arbitration. By the time of the hearing, and before any arbitration proceeding had taken place, ILWU's "in lieu of" claims had accumulated to a total of $55,000–$65,000.

On 6 December 1982 AWPPW area representative, Charles Mahlum, wrote the following in a letter to Dahlgren, who was now the Employer's general manager of the entire Bellingham Division:

> Local 194 AWPPW understands that Local 7 of the Longshoremen and Bellingham Stevedoring, have referred to their Arbitrator, the grievance regarding the jurisdiction of the "Cat" Operator jobs on the salt pile during ship unloading.
>
> Please be advised that Local 194, AWPPW, will take whatever action it determines is necessary—up to and including work stoppage—to assure that those jobs remain covered by the AWPPW and its Local Union as they have in the past.

On 16 December the Employer filed the instant charge alleging that both AWPPW and ILWU violated Section 8(b)(4)(D) of the Act. On 20 December AWPPW Representative Mahlum wrote a second letter to Dahlgren which read as follows:

> I am withdrawing my letter to you dated December 6, 1982, in as much [sic] as the work is being assigned to Local 194, AWPPW, as it has in the past.

At the hearing, when asked for AWPPW's position if the Employer were to reassign the bulldozer work to employees represented by ILWU, Mahlum testified that his 6 December letter "stated clearly . . . that if all else fails we could ultimately strike the middle of that work dispute." Mahlum further acknowledged that he was reaffirming the position he had taken in the 6 December letter.

B. *The Work in Dispute*

The work in dispute involves the operation of bulldozers for the purpose of piling salt on a salt pad owned by the Employer and located on a pier leased to the Employer, during times when ships and barges[3] containing salt to be deposited on that pad are being unloaded at the pier by employees of Bellingham Stevedoring Company who are represented by ILWU.

C. *Contentions of the Parties*

The Employer contends that reasonable cause exists to believe that both AWPPW and ILWU have violated Section 8(b)(4)(D) of the Act. It argues that, by its letter of 6 December, AWPPW explicitly threatened a work stoppage in the event the disputed work was reassigned to ILWU; that AWPPW's letter of 20 December did not constitute a disclaimer of the disputed work; and that AWPPW Representative Mahlum's testimony at the hearing reaffirmed the 6 December threat. The Employer further argues that by filing grievances against Bellingham Stevedoring, which has no control over the disputed work, ILWU has attempted to exert secondary pressure on the Employer to reassign the work to employees represented by ILWU. Regarding the merits of the dispute, the Employer contends that the disputed work should be awarded to its own employees represented by AWPPW based on its collective-bargaining agreement with AWPPW as well as the factors of Em-

[3] The parties stipulated at the hearing to add the words "and barges" after "ships" in the description of the disputed work set forth in the notice of hearing.

ployer assignment and preference; Employer past practice and industry practice; relative skills and training; and economy and efficiency of operations.

At the hearing, AWPPW contended that the disputed work was covered by its collective-bargaining agreement with the Employer. It further took the position that it was not threatening to strike so long as the work was assigned to AWPPW but that a strike was a "possibility" if the work were reassigned to ILWU.

ILWU contends that there is no reasonable cause to believe that it has violated Section 8(b)(4)(D) of the Act since it has not sought to have the Employer assign work to employees who are represented by ILWU. ILWU argues that in filing grievances against its employer, Bellingham Stevedoring, it merely has pursued its contractual rights under the PMA agreement to preserve and regain work traditionally performed by its members. ILWU further contends that the notice of hearing should be quashed because of AWPPW's withdrawal of its 6 December letter; ILWU argues that such withdrawal eliminates any basis for finding that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. Finally, assuming the existence of a jurisdictional dispute, ILWU contends that the disputed work should be awarded to employees represented by it based, *inter alia*, on its collective-bargaining agreement with PMA; industry practice; arbitration awards in similar cases; and economy and efficiency of operations.

Bellingham Stevedoring has taken no position on the issue of reasonable cause or on the merits of the dispute.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As indicated above, AWPPW's letter of 6 December 1982 informed the Employer that it would take "whatever action it determines is necessary—up to and including work stoppage—to assure that those jobs remain covered by the AWPPW . . . ." We find that this letter explicitly threatened a work stoppage in the event the Employer attempted to reassign the disputed work. It is well settled that such a threat, which puts improper pressure on an employer to continue a work assignment, constitutes reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.[4] Moreover, with regard to the alleged withdrawal of the threat, although it appears that AWPPW notified the Employer in a second letter that it was "withdrawing" its letter of 6 December, we note that AWPPW expressly linked such withdrawal to the fact that the work still was being assigned to AWPPW. Thus, it appears that any withdrawal of the threat was conditional at best and that it still applied if the Employer were to reassign the work.[5] In any event, however, since AWPPW reaffirmed its position of 6 December at the hearing, we find that the threat has not been withdrawn effectively. Thus, we reject ILWU's contention that the notice of hearing should be quashed on the basis of AWPPW's second letter. We further find, in agreement with the Employer, that AWPPW has made no effective disclaimer of the work in dispute but rather has continued to assert its claim to the work. Accordingly, based on all of the foregoing, we find that there is reasonable cause to believe that an object of AWPPW's action was to force the Employer to continue to assign the disputed work to employees represented by AWPPW and that a violation of Section 8(b)(4)(D) has occurred.

We further find reasonable cause exists to believe that ILWU has violated Section 8(b)(4)(D) of the Act. As noted above, ILWU filed grievances against Bellingham Stevedoring seeking payments in the amount that ILWU-represented employees would have earned if they, and not AWPPW, had been assigned the work in dispute. Since the record indicates, however, that Bellingham Stevedoring had no control over the work in dispute,[6] ILWU's conduct in filing the grievances gives rise to the implication that the grievances were designed to satisfy ILWU's jurisdictional claims.[7] Moreover,

[4] See, e.g., *Stereotypers and Electrotypers Union, Denver Local 13 (The Denver Post, Inc.)*, 246 NLRB 858, 860 (1979); *International Association of Machinists and Aerospace Workers, AFL-CIO (Brown & Williamson Tobacco Corporation)*, 242 NLRB 22, 24 (1979).

[5] See *Subordinate Union No. 30 of Illinois of the Bricklayers, Masons and Plasterers International Union of America, AFL-CIO (Cerro Copper and Brass Company, a Division of Cerro Corporation)*, 164 NLRB 945, 948 (1967).

[6] The record contains evidence showing that Bellingham Stevedoring's control over the salt ended when it was deposited in the hopper on the dock. ILWU acknowledged that this was the understanding, at least until September 1981, as part of a 1965 "manning" agreement between ILWU and PMA. ILWU contends, however, that the Employer's switch to bulldozers in September 1981 negated the premise of the 1965 agreement, i.e., a fully automated shoreside operation, and therefore the 1965 agreement no longer was applicable. We find it unnecessary, in the context of this Sec. 10(k) proceeding, to consider the current viability of the 1965 ILWU-PMA agreement, since we find sufficient evidence in the record to show that the Employer exercised sole control over the work in dispute.

[7] See *Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Pacific Maritime Association)*, 224 NLRB 801, 805-808 (1976). See also *Millwrights Union Local 102, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Frederick Meiswinkel, Inc. d/b/a Meiswinkel Interiors)*, 260 NLRB 972 (1982).

since the record indicates that employees represented by ILWU never have been assigned the work of operating bulldozers on top of the salt pad, we reject ILWU's "work preservation" defense. Based on all of the foregoing, and the record as a whole, we find that there is reasonable cause to believe that an object of ILWU's filing of grievances against Bellingham Stevedoring was to apply indirect pressure on the Employer to assign the disputed work to employees represented by ILWU.

No party contends, and the record contains no evidence showing, that an agreed-upon method for the voluntary adjustment of this dispute exists to which all parties are bound. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[8] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[9]

The following factors are relevant in making the determination of the dispute before us:

1. Certification and collective-bargaining agreements

Neither of the labor organizations involved in this dispute has been certified by the Board as the collective-bargaining representative of the Employer's employees in an appropriate unit. However, the record indicates that the Employer has recognized AWPPW and currently has a collective-bargaining agreement with AWPPW covering the wages and working conditions of "all employees of the Company," with exceptions that are not relevant to this proceeding. It also is undisputed that the Employer and AWPPW have agreed upon a wage rate for employees with the job classification of "equipment operator" who have been performing the work in dispute. We therefore find that the collective-bargaining agreement is sufficient to cover the work in dispute. The record further indicates that the Employer has no employees represented by ILWU and has no collective-bargaining agreement with that Union. Moreover, the Employer is not a member of the Pacific Maritime Association (PMA), with whom ILWU maintains a collective-bargaining relationship. We therefore find that the factor of collective-bargaining agreements favors an award of the disputed work to the Employer's employees who are represented by AWPPW.

2. Employer practice, assignment, and preference

The record indicates that, since September 1981, the Employer consistently has assigned the disputed work to its own employees represented by AWPPW. It also appears that the use of bulldozers during unloadings is a direct substitute for the use of the shuttle conveyor, which also was operated by the Employer's AWPPW-represented employees. Based on the foregoing, we find that the Employer's assignment and practice favor an award to its employees represented by AWPPW.

Moreover, at the hearing and in its brief, the Employer expressed its preference that the disputed work continue to be performed by its employees represented by AWPPW. While we do not afford controlling weight to this factor, we find that it favors an award of the work in dispute to employees represented by AWPPW.

3. Area practice

The Employer introduced testimony from officials of three other chlorine manufacturers who receive bulk shipments of salt at their dock facilities in Tacoma, Portland, and Longview, Washington. All indicated that longshoremen's duties were limited to the actual unloading of salt from the ships; i.e., ending with the depositing of the salt in a hopper on the dock. Thus, longshoremen were not involved in moving salt from the dock to the storage area, a task which generally was performed by non-longshore company personnel using conveyor belts and bulldozers.

ILWU acknowledged at the hearing that there were no operations in the Bellingham area in which employees represented by it operate bulldozers on high piles of cargo "shoreside," but it adduced testimony that the work of unloading cargo from a vessel to its "first place of rest" on the dock traditionally is longshoremen's work and that the Employer's bulldozer operation is an integral part of the unloading operation. However, since there is no evidence of any area practice to use employees represented by ILWU for shoreside bulldozer operations, and there is evidence of an area practice to use non-ILWU personnel, we find that this factor tends to favor an award of the work in dispute to the Employer's AWPPW-represented employees.

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[8] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[9] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1042 (1962).

4. Relative skills and training

The record reveals that the Employer's AWPPW-represented employees who currently perform the work in dispute have completed a training program resulting in certification as a bulldozer operator. At the time of the hearing, the Employer had five certified bulldozer operators and others in various stages of training. Such training includes practical training on the salt pad itself which, because of its height and composition, apparently involves special hazards. The record further indicates that the Employer's bulldozer operators are responsible for "user maintenance" of the equipment and for inspection of the color of the salt. They also are instructed in safety procedures; e.g., what to do in the event of an accidental release of chlorine from the plant.

ILWU presented testimony to show that the employees it represents possess the requisite skills and training to perform the work in dispute. Thus, it appears that, of ILWU's 53 members, about 80 percent have been certified to operate heavy equipment, including bulldozers, through PMA's safety and training department. However, although employees represented by ILWU regularly operate bulldozers in the holds of ships during unloading operations, they apparently do not operate bulldozers on top of salt pads anywhere in the area. Moreover, unlike the Employer's AWPPW-represented employees, employees represented by ILWU normally do not do maintenance work on their machines. Based on all of the above, and particularly the onsite training received by the Employer's employees, we find that the factor of relative skills and training tends to favor an award to the Employer's AWPPW-represented employees.

5. Economy and efficiency of operations

The record indicates that the Employer's employees who are represented by AWPPW are familiar with the disputed work as a result of having performed it since September 1981. Moreover, as indicated above, they have received practical training on top of the salt pad as well as safety training involving the Employer's chemical operations. Additionally, employees represented by AWPPW perform "user maintenance" of the equipment. The record further indicates that the Employer's assignment enables it to maintain control over its conveyor belt operations and bulldozer operations as a unit since the conveyor belt operators and bulldozer operators relieve each other on breaks throughout the shifts. As a result, the Employer can, and does, allocate fewer operators per machine. Moreover, once the work on top of the salt pad is completed, the Employer's bulldozer operators are available for assignments elsewhere around the plant.

On the other hand, employees represented by ILWU previously have not performed work on salt pads. Furthermore, ILWU has not shown that employees represented by it possess the skills to operate the Employer's conveyor belts, that they can perform "user maintenance" on the equipment, or that they have received safety training for hazards arising in chemical plant operations. Thus, we find that the factor of economy and efficiency of operations favors an award of the disputed work to the Employer's AWPPW-represented employees.

6. Arbitration awards and agreements between unions

ILWU submitted into evidence several arbitration awards involving the unloading of bulk cargo under its collective-bargaining agreement with PMA. ILWU contends that these awards establish, *inter alia*, that the placing of cargo in a hopper does not relieve a stevedoring company of its contractual obligations under the PMA agreement and that a stevedoring company cannot contract with a non-PMA member to change the terms of the PMA agreement. ILWU urges that these awards be considered as a factor supporting an award of the disputed work to employees it represents. However, since neither the Employer nor AWPPW participated in or was bound by such arbitration proceedings, we find that the arbitration awards are entitled to little or no weight in determining the dispute.

ILWU introduced testimony that, sometime after September 1981, it had two meetings with officials of AWPPW during which ILWU claimed that the disputed work was longshoremen's work and AWPPW orally agreed. AWPPW disputes the fact that it agreed to ILWU's claim of jurisdiction over the work. In any event, by letter dated 3 February 1982, AWPPW notified ILWU that "the transfer and handling of salt from the Port of Bellingham dock to its final resting place is and remains under the jurisdiction of [AWPPW]." Thus, there is no current agreement between ILWU and AWPPW which can serve as an aid in determining this dispute.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by AWPPW are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements; Employer practice, assignment, and preference;

area practice; relative skills and training; and economy and efficiency of operations. In making this determination, we are awarding the work in dispute to employees who are represented by AWPPW, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Bellingham Division, Georgia-Pacific Corporation, who are represented by Local Union No. 194, Association of Western Pulp and Paper Workers, are entitled to perform the work of operating bulldozers for the purpose of piling salt on a salt pad owned by Bellingham Division, Georgia-Pacific Corporation, and located on a pier leased to Bellingham Division, Pacific Corporation, during times when ships and barges containing salt to be deposited on that pad are being unloaded at the pier by employees of Bellingham Stevedoring Company, who are represented by Local Union No. 7, International Longshoremen's and Warehousemen's Union.

2. Local Union No. 7, International Longshoremen's and Warehousemen's Union, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Bellingham Division, Georgia-Pacific Corporation, to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local Union No. 7, International Longshoremen's and Warehousemen's Union, shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.